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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,971	07/20/2004	Martin Kowalski	F-8335	8449
28107	7590	11/15/2005	EXAMINER	
JORDAN AND HAMBURG LLP 122 EAST 42ND STREET SUITE 4000 NEW YORK, NY 10168			LE, MARK T	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/501,971	Applicant(s) KOWALSKI, MARTIN	
	Examiner Mark T. Le	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/20/04</u> . | 6) <input type="checkbox"/> Other: ____ |

4

DETAILED ACTION

1. The abstract of the disclosure is objected to because phrases that can be implied, i.e. "The invention relates ..." line 1 of the abstract, and legal phraseologies, such as "said"/"means", line 3 of the abstract, should be avoided. Correction is required. See MPEP § 608.01(b).
2. Claims 4-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, line 2, "the reinforcements" lacks antecedent basis. It should be changed to -- the reinforcement parts -- so as to be consistent with the same recited in claim 1.

In claim 4, line 3, the expression " angled bar joists with, in each case three longitudinal rods, forming the edges ..." is confusing. It should be changed to -- angled bar joists, each of which includes three longitudinal rods forming the edges ...".

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Wills (US 978,343).

Wills discloses a two-block railroad tie having all the features as recited in the instant claims, including concrete blocks 1, and protruding reinforcement parts 2, 3.

Regarding the instant claimed connections recited in instant claim 1, note that the end portions of reinforcement parts 2;3 of Wills are readable as such connections.

Regarding the instant claimed equalizing pieces, as recited in instant claim 2, consider fasteners 10 and 11 of Wills, which are readable as equalizing pieces.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wills (US 978,343) in view of Mohr (US 6,488,215).

Wills is applied above. It is noted that the structure of Wills does not include meandering coils interconnecting longitudinal rods 2 and 3. In Mohr, connectors 5, which have the appearance of meandering coils in the assembled positions, are provided to interconnect the longitudinal rods. In view of Mohr, it would have been obvious to one skilled in the art to provide connectors, similar to that taught by Mohr, in the structure of Wills for interconnecting longitudinal rods 2 and 3 for enhancing structural integrity of the reinforcement parts.

Regarding the instant claimed pushed-in bar joint sections recited in instant claim 5, consider bolts 10, 11 of Wills, which are readable as pushed-in bar joint sections that are pushed into the holes of longitudinal rods 2 and 3 of Wills, and clamp or bolt the longitudinal rods together in the assembled position.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayes (US 990,650).

Hayes discloses a two-block railroad tie including concrete blocks 5, protruding reinforcement parts 9 and connectors 10. The assembling of the structure of Hayes inherently requires most steps recited in the instant method claim. Regarding the step of utilizing a gauge, note that the structure of Hayes is not designed with a fixed gauge, but rather with an adjustable means so that the gauge may be adjusted (see lines 12-19 of Hayes); therefore, it would have been obvious to one skilled in the art to use a gauge when adjusting the spacing between the two blocks during an installation process so as to achieve a proper track gauge.

8. Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayes (US 990,650) in view of Graham (US 605,866)

Hayes is applied above.

Regarding the instant claimed connector being a pipe section, as recited in instant claim 7, consider turnbuckle 8 of Graham device in the form of a pipe section. In view of Graham, it would have been obvious to one skilled in the art to alternatively substitute a turnbuckle in the form of a pipe section, similar to that taught by Graham, for the turnbuckle of Hayes so as to perform the same expected function thereof, and achieve expected advantages thereof.

9. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mohr (US 6,488,215) in view of Wills (US 978,343).

Mohr discloses a railroad tie, similar to that recited in the instant claims, including two concrete blocks 1 and reinforcement parts 2; wherein, reinforcement parts 2 protrude downwardly out of partly formed concreting sloping surfaces 12 of individual concrete blocks 1. However, it is noted that reinforcement parts 2 of Mohr are made as long bar joists instead of interconnected short bar joists, as required by the instant claims. Wills on the other hand teaches reinforcement parts 2, 3 in the form of short bar joists interconnected by bolts 10, 11 to form long bar joints to meet the required gauge of the track. In view of Wills, it would have been obvious to one skilled in the art to form the long bar joists of Mohr in short segments, in a manner similar to that taught by Wills, so as to achieve expected advantages thereof, such as the convenience of handling the ties in shorter segments before an installation.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 571-272-6682. The examiner can normally be reached on Mon-Fri (2:00-8:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le
Primary Examiner
Art Unit 3617

mle
11/09/05